

Ombudsman's Determination

Applicant	Mr R
Scheme	The People's Pension (the Scheme)
Respondent	Cooler Tech Limited (the Employer)

Outcome

1. Mr R's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of his pension and make good any shortfall in units. In addition, the Employer shall pay Mr R £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr R has complained that the Employer, despite deducting contributions from his pay, has failed to pay the contributions into the Scheme.
3. Mr R has said that the missing contributions amounted to £887.97.

Background information, including submissions from the parties

4. In August 2018, Mr R began his employment with the Employer.
5. On 15 January 2020, Mr R brought his complaint regarding the unpaid pension contributions to The Pensions Ombudsman (**TPO**). Mr R said that his Employer failed to make contributions to the Scheme between April 2019 and October 2019. Mr R has provided copies of the payslips for this period, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £887.97. A breakdown of the deductions has been included in the Appendix.
6. On 29 July 2022, TPO asked the Employer for its response to Mr R's complaint.
7. On 29 July 2022, the Employer responded and said that the business is in financial difficulty. It said the person who operated pension and the director have both left.

8. On 1 August 2022, TPO explained to the Employer that the company is still liable for the missing pension contributions due to Mr R regardless of financial difficulty and the current employment structure.
9. On 3 August 2022, the Employer stated that the company has ceased trading. This was the final correspondence received by the Employer.
10. On 9 August 2022, TPO checked Companies House which showed the Employer's company as Active. On the same day, TPO asked for official documentation as proof that the company has ceased trading.
11. On 23 August 2022, TPO chased the Employer again. But the Employer failed to respond by the deadline.

Caseworker's Opinion

12. Mr R complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer as it had failed to remit the contributions that were due to the Scheme. The Caseworker's findings are summarised below:-
 - The Caseworker said that she had no reason to doubt the information provided by Mr R. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr R's salary, that had not been paid into the Scheme. In addition, the Employer had not paid any of the employer contributions that were due over the same period. As a result of its maladministration, Mr R was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr R had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
13. The Employer did not respond to the Caseworker's Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

14. Mr R has complained that the Employer has not paid all the contributions due to his Scheme account.
15. The available evidence supports the view that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this and did not engage with either my Office or Mr R adequately. It has also failed to respond to the Caseworker's Opinion.
16. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr R to suffer a financial loss. The Employer shall take remedial action to put this right.

17. Mr R is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which he has suffered. This was exacerbated by its failure to continue to respond during my Office's investigation into Mr R's complaint.

Directions

18. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr R £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr R's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Mr R.
19. The Employer shall, within 14 days of receiving a request by Mr R, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
20. Within 14 days of receiving confirmation from Mr R that he agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions to the Scheme;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr R's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
21. Within 14 days of receiving confirmation from the People's Pension of any shortfall in Mr R's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
24 October 2022

Appendix

Date	Employee contributions	Employer contributions
26 April 2019	£79.52	£59.64
31 May 2019	£79.52	£59.64
28 June 2019	£79.52	£59.64
26 July 2019	£79.52	£59.64
29 August 2019	£79.52	£59.64
27 September 2019	£79.52	£59.64
25 October 2019	£30.29	£22.72
Total	£507.41	£380.56
	Total	£887.97